IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

D.B. CRIMINAL APPEAL NO.974/2003

(Subhan Khan v. The State of Rajasthan)

Under Section 374 (2), Cr.P.C., against the Judgment dated 10.07.2003 passed by Shri P.L.Hisaria, RHJS, the learned District & Sessions Judge, Jaisalmer in Sessions Case No.50/2001.

DATE OF JUDGMENT :::: 17-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. P.N.Mohhani, for Appellant (s).
Mr. J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Aggrieved by the judgment of the District & Sessions

Judge, Jaisalmer dated 10.07.2003 in Sessions Case No.50/2001, appellant Subhan Khan has preferred this appeal.

Complainant Salu Khan lodged FIR at about 11.00 a.m. On 13.08.2001 before Police Station, Nachna. The FIR was registered being No.28/2001. The matter was registered under Section 307 of IPC. The prosecution case as stated is that accused subhan Khan married to his Bhabhi Jammi, on the death of his brother – Dite Khan. Jammi and Dite Khan had four daughters, whereas two daughters were born from the wedlock of the accused Subhan Khan and deceased Jammi. After the deathof Dite Khan, land belonging to him was registered in the name of deceased Jammi. The accused Subhan Khan used to pressurise Jammi for transfer of said land in his name. On 12.08.2001, Subhan Khan came on the field in the evening and asked deceased to transfer land in his name, Jammi refused to do so. On that, deceased and accused had some altercation. The accused stayed there in the night. At about 4 – 5 a.m., on 13.08.2001, Dalli and Guddi heard the cries of her mother, being sleeping close to her, they immediately got up, it was found that accused was giving blows to their mother Jammi by "Kassi". Immediately, Dalli went to call her neighbour Kadar Khan, who, in fact, was on the way to the scene of occurrence, after hearing the noise. On reaching the place of occurrence, Subhan Khan run away. Kadar Khan and deceased's father

thereafter escorted deceased Jammi to the hospital at Bikaner, where Jammi died.

The Police conducted investigation and after the death of deceased Jammi, the matter was registered under Section 302 of IPC and, accordingly, charge-sheet was filed against the accused on 29.09.2001 before the Additional Chief Judicial Magistrate, Pokhran. The matter was committed to the Sessions Court, from where it was made over to the trial Court.

The trial Court framed charge against accused under Section 302 of IPC. Charge was read over to the accused, who then denied the charge and claimed trial.

At the trial, 15 witnesses were produced and 23 documents were exhibited by the prosecution, whereas statement of accused was recorded under Section 313 of Cr.P.C. Accused stated that he was not present at the scene of occurrence as he was at the residence of his borhter – Abbu Khan. Deceased's father – Mehar Deen pressurized marriage of his daughters with his grand-sons, which was not accepted by the him, hence out of revenge, false case was made against him. In defence, statement of DW 1 Hakim Khan was recorded.

The learned trial Court convicted accused under Section 302 of IPC and sentenced to life imprisonment and penalty of Rs.2,000/-, in default to undergo six months rigorous imprisonment.

The learned counsel appearing for the appellant raised many questions to challenge the impugned judgment of the trial Court. It was firstly urged that two eye witneses,namely, PW 14 Dalli and PW 15 Guddi are interested witnesses, being the daughters of deceased, hence the trial Court wrongly relied their statements. Secondly, it being night and no light was existing on the scene of occurrence, the incident could not have been seen to the extent of identifying the accused, more so at that time, every-body was sleeping. Thirdly, independent witness – Kadar Khan had not supported the case of the prosecution. Fourthly, accused was falsely implicated, at the instance of Mehar Deen, who was pressurizing accused to marry his daughters with grandsons and the accused having denied, Mehar Deen falsely implicated him in this matter. Fifth argument raised by the learned counsel for the appellant was that eye witness Dalli has not stated on which part of body of the deceased, the accused caused injuries. Thus, the prosecution failed to prove case by specifying the injuries alleged to be caused by the accused. It was lastly urged that there was no intention to kill deceased Jammi as accused has not come with weapon, inasmuch as weapon was lying there on the spot itself. Thus, the present case is not covered by the provisions of Section 302 of IPC.

Per contra, learned Public Prosecutor submitted that two eye witnesses Dalli and Guddi cannot be disbelieved, only for the

reason that they were daughters of deceased – Jammi. It was argued that the accused being their father may be step father, there exists no reason to make false statement. So far as identification of accused is concerned, it was submitted that though occurrence took place in the night, but it being a moon-lit night, identification of accused was not difficult, more so when accused was father of witnesses Dalli and Guddi and was otherwise sleeping close to them. So far as independent witness Kadar Khan is concerned, he was turned hostile. Thus, his statement is not worth believable and there exists material evidence to prove prosecution case. Thus, merely on the reason that Kadar Khan had not supported the prosecution, case is not demolished, more so Kadar Khan was not an eye witness. The issue regarding statement of Dalli not specifying part of body on which injuries were caused, is not an issue which can demolish prosecution case because PW 15 Guddi has specified attribution of injuries by accused. Dalli had also stated that she had seen acccused causing blow to the deceased by a "Kassi". Hence, it was urged that the argument raised by the learned counsel in this respect is not sustainable. So far as defence of the accused that Mehar Deen was interested to get his grand-sons to be married to daughters of accused and, on denial by the accused, he was falsely implicated in the matter, is not being substantiated. It was submitted that there exists no evidence to

support this story. It was lastly urged that the accused was having all intention to kill Jammi as Jammi had sustained as many as six injuries, out of which majority of the injuries were on her vital parts. The injuries caused were sufficient to cause death. Hence, it was submitted that if accused had no intention to kill deceased Jammi, then he would not have given many blows and out of which, majority was on the vital part of the body. Thus, it is prayed that there is no substance in the argument of the learned counsel for the appellant, hence the appeal deserves to be dismissed.

We have considered the rival contentions of the learned counsel and scanned the material available on record carefully.

The prosecution has proved its case by producing two eye witnesses, as well as other witnesses to corroborate the statements of those eye witnesses to establish their case. The document was also submitted to support prosecution case. The statements of two eye witnesses are quite material to judge as to whether the prosecution has proved its case beyond doubt.

Dalli (P.W.14), in her statement, stated that accused Subhan Khan used to quarrel with her mother deceased Jammi as Jammi refused to transfer the land registered in her name. On the day of incident, accused Subhan Khan, deceased Jammi, PW 14 Dalli and her sister Guddi were sleeping and during night-time, she heard cries of her mother and when she got up, it was

seen by her that Subhan Khan was giving blows to deceased Jammi by a sharp weapon "Kassi". She immediately went to her neighbour Kadar Khan to call him, but he himself was coming to the scene of occurrence, after hearing shout. On their coming, accused subhan Khan ran away from the scene of occurrence. In detailed cross-examination, no contradiction was found in her statement.

PW 15 Guddi had supported the statement of PW 14 Dalli. Guddi is also eye witness, though at the age of 15 years, but she had seen the occurrence. In her cross-examination, again, no contradiction was found.

PW 11 Dr. Mahesh Kumar stated that he was a Member of the Board constituted for post mortem of dead body of Jammi. The Post Mortem Report was prepared and produced before the Court as Ex.P-19. Deceased Jammi sustained six injuries, out of which first injury was incised wound on the left side face anterior to the left ear to the left side of forehead. Due to said injury, fracture was caused of orbital plak left frontal bone. Second injury was again incised wound on the left side of face, causing fracture of maxilla and nosal bone. Third injury was again incised wound, which was 9.0 x 1.0 cm. and was bone deep in the left side of face. Fourth injury was again incised wound, which was bone deep, extending from temporal region to thyroid region. Fifth injury was abrasion on the left arm and Sixth injury was

incised wound which was muscular deep on the back of left shoulder. In the opinion of said witness, those injuries were sufficient to cause death, in the ordinary course of nature.

PW 1 Prayag Singh stated that he was Investigating Officer who recovered weapon at the instance of the accused. He had recovered blood stained clothes of deceased, blood stained soil from the scene of occurrence and blood stained weapon. All these articles were sent for FSL report and as per report, weapon was found containing blood. Statement of said witness was supported by PW 5 Dal Singh and other witnesses.

The defence came out with the case that he has been falsely implicated in the case as Mehar Deen was having grudge against the accused . All the contentions of the defence were considered by the trial Court and after detailed discussion of the material available on record, the trial Court came to the conclusion that the prosecution proved its case beyond doubt.

Considering the argument of the learned counsel for the appellant, the matter was viewed by us as to whether witnesses Dalli and Guddi made false statements, being interested witnesses. On careful examination of their statements, we cannot accept this argument of the learned counsel for the appellant not only for the reason that there was no reason for two witnesses to make false statements against their father, but also for the reason that those witnesses were not given

suggestion in the cross-examination that they being interested witnesses, are making false statements. The witnesses cannot be disbelieved, merely for the reason that they are in relation of the deceased. Circumstances available on record suggest that presence of two witnesses, namely, Dalli and Guddi is natural and the occurrence being during night-time, their presence otherwise cannot be taken as unnatural at their own place. The scene of occurrence is the place belonging to them. No contradiction was found in their cross-examination. Thus, for all these reasons, argument of the learned counsel for the appellant cannot be accepted and we hold that the trial Court has not committed any error in relying the statements of two eye witnesses,namely, Dalli and Guddi.

So far as the second argument of the learned counsel that it being night-time, it was not possible for the eye witnesses to identify the accused. The evidence available on record suggest that it was night with full moon and two eye witnesses were sleeping close to accused and deceased. The accused having quarreled with the deceased, in the evening and, thereafter, sleeping, their during the night – time, was not difficult to identify by the two witnesses. The accused had given six blows to deceased Jammi and during that course, occurrence was seen by them. Thus, it was not difficult for witnesses to identify him from a short distance in moon-lit night. The accused had even

run away from the place of occurrence, soon thereafter when Dalli came with Kadar Khan and that was also seen by her and Kadar Khan. Identification of father is otherwise not difficult. Looking to the material available on record, it cannot be doubted that eye witnesses were not in a position to identify the accused.

So far as the third argument of the learned counsel for the appellant that independent witness has not supported the case of the prosecution, we are not impressed with that argument because Kadar Khan was turned hostile and material otherwise available on record, was sufficient to prove prosecution case. Said witness was not the eye witness. Thus, we cannot accept this argument of the learned counsel for the appellant.

So far as the fourth argument that Dalli had not stated in a specific term as to on which part of the body of deceased, accused had inflicted injuries, hence in absence of specific evidence, the accused has wrongly been connected with the crime. On careful examination of the statements of eye witnesses Dalli and Guddi and their cross-examination, which otherwise has been corroborated by the medical evidence, we are convinced that those witnesses had made specific statements to the effect that accused caused blows to deceased by a “Kassi” and as per the post mortem report, five injuries were found to have been sustained by sharp weapon which were mainly on the vital parts of the body of the deceased. Thus, the statements of

eye witnesses Dalli and Guddi having been corroborated by the medical evidence, we cannot accept the argument of the learned counsel for the appellant that in absence of specification of part of body on which injuries were inflicted, testimony of witnesses should not be accepted. On the basis of material available on record, we are convinced that the statements of Dalli and Guddi corroborated by medical evidence, were sufficient to prove prosecution case and the statements of two eye witnesses cannot be ignored or disbelieved.

So far as the fifth argument of the learned counsel for the appelant that the accused had no intention to kill Jammi. As per the statement of Dalli and Guddi, weapon 'Kassi" was lying their only. We have considered this argument also. the post mortem report shows that deceased Jammi sustained six injuries, out of which five injuries were incised wounds, caused on the vital parts of the body and sufficient to cause death. If accused had no intention to kill Jammi, then he would not have given six blows by sharp weapon and that too, mainly on the vital parts of the body. In those circumstances, we cannot accept this argument also.

Lastly, it was urged that accused was implicated, only for the reason that father of deceased Jammi, Mehar Deen was interested to get his grand-sons married to daughters of accused and as the said proposal was not accepted by the accused, his

name was falsely given. The material available on record does not suggest and prove above version of the defence.

Accused in his statement under Section 313 stated that he was not on the scene of occurrence as he was at the place of his brother Abbu Khan. Abbu Khan was, however, not produced in the witness box, though one Hakim was produced as DW 1. If the accused was not involved in the matter, then, there was no reason for him not to report the incident to the police immediately being husband. However, the facts available on record show that incident was not reported by the accused. Thus, in those circumstances, coupled with the material available on record, it cannot be said that accused is falsely implicated in this case.

In the light of the discussions made above, we are not inclined to accept any of the arguments raised by the learned counsel for the appellant.

In view of the above, we are not persuaded to interfere with the finding of the learned trial Court and in the result, the appeal fails and the same is dismissed. The accused to serve out sentence as ordered by the trial Court.

(MUNISHWARNATH BHANDARI),J. **(BHAGWATI PRASAD),J.**

scd.